

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

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|------------------------------------------|---|-------------------------|
| CHRISTOPHER COSTA, M.D., |) | |
| |) | CASE NUMBER: 4:05CV3248 |
| Plaintiff, |) | |
| |) | |
| v. |) | |
| |) | |
| |) | |
| MICHAEL O. LEAVITT, Secretary, |) | ANSWER |
| U.S. Department of Health and Human |) | |
| Services, and his Successors; UNITED |) | |
| STATES DEPARTMENT OF HEALTH |) | |
| AND HUMAN SERVICES; and the |) | |
| NATIONAL PRACTITIONER DATA |) | |
| BANK, an Entity of and Run by the U.S. |) | |
| Department of Health and Human Services, |) | |
| |) | |
| Defendants. |) | |
| |) | |

Come now the Defendants, Michael O. Leavitt, the Secretary of the United States Department of Health and Human Services, and the United States Department of Health and Human Services, by and through its undersigned attorneys, and in answer to plaintiff's Complaint states as follows:

FIRST DEFENSE

_____The Complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE

The National Practitioner Data Bank is not a proper defendant and should be dismissed from this action.

THIRD DEFENSE

Answering specifically the numbered paragraphs of the Complaint using the same

paragraph numbering, the Defendants state as follows:

1. This paragraph contains jurisdictional averments to which no response is required.

2. Defendants lack sufficient knowledge to admit or deny the allegations in Paragraph 2 of the Complaint that Plaintiff is a resident of Nebraska. Moreover, Paragraph 2 of Plaintiff's Complaint states a legal conclusion to which no response is required. Insofar as a response could be construed as required, it is denied.

3. Defendants lack sufficient knowledge to admit or deny the allegations in Paragraph 3 of the Complaint that Plaintiff is a resident of Gothenberg, Dawson County, Nebraska. Defendants admit that Plaintiff was the subject of an Adverse Action Report filed with the National Practitioner Data Bank by John Johnson, CEO with Gothenburg Memorial Hospital.

4. Defendants admit that Michael O. Leavitt is the Secretary of Health and Human Services (Secretary), duly appointed, qualified and acting as the administrative head of such agency. The remaining allegations contained in Paragraph 4 state a legal conclusion to which no response is required. Insofar as a response could be construed as required, it is denied.

5. Admit.

6. Defendants deny that the National Practitioner Data Bank is an entity and avers that it is a system of records and program for maintenance of the system of records known as the National Practitioner Data Bank and administered by the United States Department of Health and Human Services.

7. Admit.

8. Admit.

9. Defendants lack sufficient knowledge to admit or deny the allegations contained in

Paragraph 9. To the extent that an answer is required, it is denied.

10. Admit.

11. Admit.

12. Admit.

13. Admit.

14. Admit.

15. Admit.

16. Admit.

17. Admit.

18. Paragraph 18 contains plaintiff's characterization of his action to which states a legal conclusion to which no response is required, but insofar as an answer may be deemed to be required, it is denied.

19. Paragraph 19 states a legal conclusion to which no response is required. To the extent that a response is required, it is denied.

20. Paragraph 20 is a statement realleging and incorporating paragraphs 1 to 19 by reference. Defendants reallege and incorporate by reference its answers to the allegations contained in paragraphs 1 through 19 as if fully set forth herein.

21. Paragraph 21 contains plaintiff's characterization of his action to which states a legal conclusion to which no response is required, but insofar as an answer may be deemed to be required, it is denied.

The last lettered paragraphs of the Complaint contain Plaintiff's request for relief. The Defendants deny that the Plaintiff is entitled to the relief requested in those paragraphs, or to any

relief whatsoever. The Defendants deny each and every material allegation contained in Plaintiff's Complaint, except has been heretofore expressly and specifically admitted.

WHEREFORE, Defendants pray that Plaintiff's complaint be dismissed with prejudice, at Plaintiff's cost, and that the Defendants be awarded such other and further relief to which Defendants may be entitled.

MICHAEL G. HEAVICAN
United States Attorney
District of Nebraska

S/ Paul D. Boeshart
PAUL D. BOESHART #10365
Assistant United States Attorney
District of Nebraska
487 Federal Building
100 Centennial Mall North
Lincoln, NE 68508-3865
Tele: (402) 437-5241
FAX: (402) 437-5390
Email: paul.boeshart@usdoj.gov

Of Counsel:
DUANE N. BRUCE
Assistant Regional Counsel
Department of Health and Human Services
601 East 12th Street, Room N1800
Kansas City, Mo. 64106
(816) 426-6513
Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on November 23, 2005, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which sent notification of such filing to the following:

Sally A. Rassmussen

and hereby certify that I have mailed by United States Postal Service the document to the following non CM/ECF participants: N/A.

s/ Paul D. Boeshart
PAUL D. BOESHART
Assistant United States Attorney